

(1) Petition for Final Distribution and (2) for Final Accounting, and (3) for Allowance of Statutory Attorney's Compensation and (4) for Extraordinary Attorney's Compensation, and (5) to Surcharge Personal Representative, and (6) for Liability on Probate Bond

DOD: 7/27/2005		THOMAS ALEXANDER, JR. , attorney for Jeffrey Martin, Administrator, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
			1. Need Notice of Hearing.
Cont. from		JEFFREY MARTIN was appointed Administrator on 5/23/06 with full IAEA authority and bond set at \$252,100.00. Bond was filed on 8/31/06 and Letters issued.	2. Need proof of service of the Notice of Hearing along with a copy of the petition on: a. Steven Diebert – pursuant to his Request for Special Notice.
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		3. Need proof of service of the Notice of Hearing on: a. American Contractors Indemnity Company (bond) b. Jeffrey Martin (Administrator/beneficiary) c. Melanie McClay (beneficiary)
<input checked="" type="checkbox"/>	Inventory		
<input checked="" type="checkbox"/>	PTC		4. Petition is signed and verified with a computerized electronic signature by the attorney. Need original signature.
<input checked="" type="checkbox"/>	Not.Cred.		
<input type="checkbox"/>	Notice of Hrg	X	5. Petition states that it is the attorney's belief that fees remain due to probate referee Steven Diebert. However the petition does not indicate the balance of the fees due nor does it request payment of said fees.
<input type="checkbox"/>	Aff.Mail	X	
<input type="checkbox"/>	Aff.Pub.		Please see additional page.
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		Reviewed by: KT
<input type="checkbox"/>	Conf. Screen		
<input checked="" type="checkbox"/>	Letters	8/31/16	Reviewed on: 10/27/14
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		Updates:
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		Recommendation:
<input checked="" type="checkbox"/>	9202	X	
<input type="checkbox"/>	Order	X	File 1 – McClay
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice	N/A	

THOMAS ALEXANDER, JR., attorney for Jeffrey Martin, Administrator, is Petitioner.

JEFFREY MARTIN was appointed Administrator on 5/23/06 with full IAEA authority and bond set at \$252,100.00. Bond was filed on 8/31/06 and Letters issued.

I & A, part. 1, filed on 2/5/07 with a value of \$300,000.00.

Creditor's Claims filed:

- Cancer Care Associates - \$1,105.65

Attorney fees - \$9,000.00
Attorney x/o - \$1,500.00 (for the filing of this petition)
Costs - \$435.00 (filing fee)

Petitioning attorney states that it is his belief that the Administrator borrowed a sum of money (probably in excess of \$15,000) for the purpose of satisfying obligations and expenses of the estate. It is petitioner's belief that the loan was secured by the estate's real property. The intention of the Administrator that he would (1) distribute a portion of the loan to satisfy an assignment of interest of his sister and co-heir of the estate< Melanie McClay, (2) make necessary repairs to the estate real property, and (3) assume the loan, in his individual capacity, after the close of the probate proceedings. Petitioner states he is unaware (1) whether any distribution of the loan proceeds was made, (2) whether any payment to Melanie McCray or any repairs were made, or (3) whether any payments on the loan were made.

Please see additional page

Petitioning attorney states he is unaware whether any proceeds remain available for distribution. Petitioner is also unaware of the existence of any executed assignment of interest by Melanie McCray.

Petitioner request surcharge of the Personal Representative (1) to the extent of any breach of fiduciary duty or to the extent that estate funds have, through negligence or otherwise, become unavailable to the estate, (2) to the extent of any loss of her estate shares of the estate property by Melanie McCray, (3) of any monies that are due to the Probate Referee or any creditors of the estate, and (4) to the extent of any statutory compensation that are due this petitioning attorney, and for extraordinary services rendered in preparing this petition.

Wherefore Petitioning Attorney prays:

1. That the administration be brought to a close;
2. That this Final Account and Petition for Final Distribution and for Statutory and Extraordinary Attorney Fees and for Surcharge on the Personal Representative's Bond be approved as filed;
3. That the acts and proceedings of Petitioner as Administrator be confirmed and approved;
4. That this Petitioning attorney, be authorized and directed to pay himself \$9,000 in statutory and \$1,500 as extraordinary fees and \$435.00 for reimbursement of costs;
5. That the Administrator be surcharged in an amount calculated to pay the statutory and extraordinary fees and reimbursement of costs in the sum of \$10,935, and that Cancer Care Associated in the amount of \$1,105.65, and that distribution of on half of the remaining trust estate be paid to Melanie McCray to make her whole as the Administrator's co-heir. That any remaining estate property after proper payments of costs of administration and the ½ interest of his co-heir be paid to Jeffrey McCray, Administrator.

NEEDS/PROBLEMS/COMMENTS (Cont.):

6. Petition does not contain a statement regarding Probate Code §216 and 9202(b) re: notice to the Director of Victims Compensation and Government Claims Board
7. Petition alleged Jeffrey Martin absconded with the estate. However the petition does not indicate what efforts were made to locate Jeffrey Martin.

NEEDS/PROBLEMS/COMMENTS (Cont.):

8. Attorney Thomas Alexander is requesting extra ordinary fees for the filing of this petition. The request for extraordinary fees does not comply with California Rules of Court, Rule 7.702. In addition,

Probate Code §12205 indicates the court may reduce the compensation of the personal representative or attorney for the personal representative by an amount the court determines appropriate if the court makes all of the following determinations:

- 1) The time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court.
- 2) The time taken was within the control of the personal representative or attorney whose compensation is being reduced.
- 3) The delay was not in the best interest of the estate or interested persons.

Probate Code §12200 states the personal representative shall either petition for an order for final distribution of the estate or make a report of the status of administration not later than the following times:

- a) In an estate for which a federal estate tax return is not required, within one year after the date of issuance of letters.

In this matter there was no activity by the attorney or the personal representative from 2/5/07 until the matter was set for a status hearing on 3/7/14. The attorney and the personal representative did not appear at the status hearing on 3/7/14. An Order to Show Cause was issued and the matter continued to 5/2/14. On 5/2/14 the attorney and the personal representative again did not appear. The court imposed sanctions on the attorney for \$500 and continued the matter to 5/23/14. On 5/23/14 the attorney appeared (but did not file a written status report as required by Local Rule 7.5C). The attorney made representations to the court and the court rescinded the previously issued sanctions. The status hearing was continued to 8/7/14. On 8/7/14 the attorney appeared (but again did not file a written status report as required by Local Rule 7.5C) and the status hearing was continued to 9/25/14. On 9/10/14 this Petition was filed. There is no explanation as to why the estate was delayed for over 7 years.

9. Need Order.

DOD: 9/18/2007		LAURA DOZIER , surviving spouse/Administrator, is petitioner.	NEEDS/PROBLEMS/COMMENTS: Continued from 9/3/14. As of 10/24/14 the following issues remain:
		Account period: 2/4/2008 – 9/30/2013	
Cont. from 121113, 020314, 022414, 032414, 042114, 051914, 063014, 090314		Accounting - \$650,755.95 Beginning POH- \$650,750.00 Ending POH - \$338,000.00	1. Petition states the real property on South Cornelia was a single family residence, having been acquired by the decedent prior to his marriage (in April of 2006) to petitioner. Following the decedent's death, Petitioner continued to reside in the home with her sons, and over the next fifteen months paid the mortgage, taxes and insurance on the property. Petitioner was unable to continue to make the payments and as a result the home was foreclosed upon. Petitioner is requesting reimbursement of \$25,050.00 for paying the mortgage from her personal funds. The petitioner and her sons received a benefit from living in the estate property. It appears that the payments towards the mortgage should be considered rents for living in the estate's real property and therefore not reimbursed.
		Petitioner states certain assets that were decedent's separate property constitute exempt personal property eligible to be set aside to the surviving spouse pursuant to Probate Code §6510. Petitioner requests the court set aside the following personal property <ul style="list-style-type: none"> • 2005 KTM Motorcycle Petitioner alleges prior to his death, the decedent had given the motorcycle to Petitioner's son, Chris Johnson. Although the motorcycle had been given to Chris, title remained in the name of the decedent. Petitioner requests the court set aside the motorcycle to Petitioner (and Petitioner will confirm transfer to her son, Chris). In the alternative, Petitioner requests that the court confirm the gift of the motorcycle made prior to the decedent's death.	
<input type="checkbox"/>	Aff.Sub.Wit.		<p align="center">Please see additional page</p>
<input checked="" type="checkbox"/>	Verified		
<input checked="" type="checkbox"/>	Inventory		
<input checked="" type="checkbox"/>	PTC		
<input checked="" type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		
<input checked="" type="checkbox"/>	Aff.Mail	W/	
	Aff.Pub.		
<input checked="" type="checkbox"/>	Sp.Ntc.	W/	
	Pers.Serv.		
	Conf. Screen		
<input checked="" type="checkbox"/>	Letters	2/4/08	
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
<input checked="" type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
<input checked="" type="checkbox"/>	FTB Notice		
Please see additional page			Reviewed by: KT Reviewed on: 10/24/14 Updates: Recommendation: File 2 – Dozier

Petitioner prays for an order:

1. That the First Amended First Account and Report of Petitioner be settled, allowed and approved as filed;
 2. That all actions of Petitioner as Administrator, as set forth in the petition, account and report be ratified, confirmed and approved;
 3. That the Court confirm reimbursement to petitioner of costs and expenses in the amount of \$17,480.00, and that petitioner is owed a balance of \$35,758.09;
 4. That the exempt personal property described in the petition be set aside to the surviving spouse or alternatively that the gift of the exempt property to Chris Johnson prior to the decedent's death be ratified, and confirmed;
 5. That the administration of the estate continue.
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NEEDS/PROBLEMS/COMMENTS (cont.):

2. Petition does not indicate whether or not the residence was marketed for sale during the 15 months Petitioner and her sons resided there after the decedent's death. Probate Code §9600 states the personal representative shall manage the estate to the extent that ordinary care and diligence require that the power be exercised. It appears that ordinary care would include marketing the property for sale rather than letting the property be foreclosed upon. Need more information regarding this property. Was there any attempt to sell the property?

Note: If the petition is granted the court will set a status hearing for the filing of the petition for final distribution on **Wednesday, January 14, 2015 at 9:00 a.m. in Dept. 303.**

Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior the date set the status hearing will come off calendar and no appearance will be required.

Probate Status Hearing Re: Proof of Bond Increase

Age:		NEEDS/PROBLEMS/COMMENTS:
DOD:		
Cont. from		
	Aff.Sub.Wit.	
	Verified	
	Inventory	
	PTC	
	Not.Cred.	
	Notice of Hrg	
	Aff.Mail	
	Aff.Pub.	
	Sp.Ntc.	
	Pers.Serv.	
	Conf. Screen	
	Letters	
	Duties/Supp	
	Objections	
	Video Receipt	
	CI Report	
	9202	
	Order	
	Aff. Posting	
	Status Rpt	
	UCCJEA	
	Citation	
	FTB Notice	
		<u>OFF CALENDAR</u> Increased bond filed 10/16/14
		Reviewed by: JF
		Reviewed on: 10/24/14
		Updates:
		Recommendation:
		File 3 – Yell

(1) Third Account Current and Report of Conservator and (2) Petition for Allowance of Compensation to Conservator and Attorney

Age: 83		PUBLIC GUARDIAN, Conservator, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
		Account period: 09/03/12 – 09/02/14	
Cont. from		Accounting - \$52,996.41	
Aff.Sub.Wit.		Beginning POH - \$27,797.08	
✓	Verified	Ending POH - \$2,369.12	
	Inventory	Conservator - \$4,527.32	
	PTC	(19.25 staff hours @ \$76/hr. and 31.92 deputy hours @ \$96/hr.)	
	Not.Cred.		
✓	Notice of Hrg	Attorney - \$1,250.00	
✓	Aff.Mail	(Less than allowed per Local Rule)	
	Aff.Pub.	Petitioner prays for an Order:	
	Sp.Ntc.	1. Approving, allowing and settling the third account; and	
	Pers.Serv.	2. Authorizing the conservator and attorney's fees and commissions.	
	Conf. Screen		
	Letters		
	Duties/Supp	Court Investigator Samantha Henson filed a report on 08/27/14.	
	Objections		
	Video Receipt		
✓	CI Report		
	2620(c)	n/a	
✓	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		
			Reviewed by: JF
			Reviewed on: 10/24/14
			Updates:
			Recommendation:
			File 4 – Poff

(1) First and Final Account and Report of Successor Administrator of Insolvent Estate and (2) Petition for Allowance of Ordinary Commissions and Fees

DOD: 09/13/10		PUBLIC ADMINISTRATOR , successor administrator, is Petitioner.		NEEDS/PROBLEMS/COMMENTS:	
		Account period: 08/30/13 – 04/23/14		<u>CONTINUED FROM 06/11/14</u>	
Cont. from 061114, 091014		Accounting	-	\$8,800.00	1. Petitioner states that it is unknown whether the former administrator provided notice to the Director of Health Services (DHS). But that even if notice was not provided, there is no estate from which to pay a claim. However, Probate Code § 9202 requires notice to the DHS if the decedent received health care benefits from the DHS. Therefore, the Court may require proof of service to the DHS. 2. On 10/14/14, the Administrator filed a supplemental Inventory & Appraisal listing an additional asset of the estate that is not accounted for in the First and Final Account, therefore it appears that an amended account will be needed. Need more information and/or Amended First and Final Account.
		Beginning POH	-	\$8,800.00	
		Ending POH	-	\$923.56 (all cash)	
		Administrator (statutory)	-	\$352.00	
		Attorney (statutory)	-	\$352.00	
		Costs (filing fees, certified copies)	-	\$460.50	
		Creditor's claims:			
		RBS Citizen N.A.	-	\$9,845.58	
		Sierra Mobil Park	-	\$4,069.54	
		Petitioner states that after only partial payment of commissions, fees and costs in the amount of \$1,164.50, there will be no funds available for payment of creditor's claims or any estate to distribute.			
Aff.Sub.Wit.					
✓	Verified				
✓	Inventory				
✓	PTC				
✓	Not.Cred.				
✓	Notice of Hrg				
✓	Aff.Mail	w/			
	Aff.Pub.				
	Sp.Ntc.				
	Pers.Serv.				
	Conf. Screen				
	Letters	05/19/11			
	Duties/Supp				
	Objections				
	Video Receipt				
	CI Report				
	9202	x			
✓	Order				
	Aff. Posting				
	Status Rpt				
	UCCJEA				
	Citation				
✓	FTB Notice				
Note to Judge: Examiner retained the Order.					
Reviewed by: JF					
Reviewed on: 10/24/14					
Updates:					
Recommendation:					
File 5 - Martin					

Atty Boyajian, Thomas M., sole practitioner (for Conservator Irene V. Santos)

(1) First Account Current and Report of Conservator and Petition for its Settlement,
 (2) for Approval of Sale of Depreciating Property, (3) for Approval of Donation,
 and (4) for Allowance of Conservator's and Attorney's Compensation

Age: 89 years		IRENE V. SANTOS , daughter and Conservator of the Person and Estate appointed on 11/8/2012 with bond set at \$123,895.00 , is Petitioner.	NEEDS/PROBLEMS/COMMENTS: Continued from 10/8/2014 at the request of counsel. The following issues from the last hearing remain:
Cont. from 090814, 100814		Account period: 12/1/2012 - 6/30/2014	<ol style="list-style-type: none"> 1. Court records do not show proof of reduced bond of \$35,000.00 has been filed. <i>Clarifying and Explanatory Declaration</i> filed on 9/8/2014 states the petition to reduce bond was filed on 6/9/2014 and was granted on 8/7/2014, with the order presumably being signed on 8/27/2014. The Court requires the filing of proof of the reduced bond pursuant to Probate Code § 2329, separately from the order reducing bond, indicating that the surety, HCC/U.S. SPECIALTY INSURANCE COMPANY, has reduced the bond amount from \$123,895.20 to \$35,000.00. This filing proof of reduced bond is standard practice required by this Court to demonstrate that the conservatorship is bonded for the specific sum, and is not paying premiums for the higher bond, but instead paying lower bond premiums for the reduced bond amount. 2. Need proposed order pursuant to Local Rule 7.1.1(F) providing that a proposed order shall be submitted with all pleadings that request relief. ~Please see additional page~
<input type="checkbox"/>	Aff.Sub.Wit.	Accounting - \$223,182.60	
<input checked="" type="checkbox"/>	Verified	Beginning POH - \$164,620.32	
<input checked="" type="checkbox"/>	Inventory	Ending POH - \$ 47,101.81 (\$42,601.81 is cash)	
<input type="checkbox"/>	Proof of Bond	Conservator - \$13,425.00 (per Declaration attached as Exhibit B1; for 447.5 hours @ \$30.00 per hour;)	
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg	Attorney - \$10,300.00 (per Declaration attached as Exhibit A1; for 41.20 hours @ \$250.00 per hour, from 9/12/2013 to 7/28/2014;)	
<input checked="" type="checkbox"/>	Aff.Mail		
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.	Bond - \$123,895.20 (Order After Hearing filed 8/27/2014 finds bond is reduced to \$35,000.00 ; bond is sufficient if Court approves requested fees.)	
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen		
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input checked="" type="checkbox"/>	2620		
<input type="checkbox"/>	Order	X	
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
			Reviewed by: LEG
			Reviewed on: 10/24/14
			Updates:
			Recommendation:
			File 6 - Murillo

Petitioner prays for an order:

1. Approving and settling the First Account;
2. Approving all acts and transactions of the Conservator relating to the conservatorship;
3. Approving and confirming the sale of the Conservatee's recreational vehicle [appraised at **\$12,500.00** and sold for **\$1,000.00**] as a sale of a depreciating asset;
4. Approving and confirming the donation to the local Salvation Army of Conservatee's furniture and furnishings [valued at **\$960.00**] as a donation of depreciating assets;
5. Authorizing and directing Conservator to pay herself **\$13,425.00** as compensation for her services rendered; and
6. Authorizing directing Conservator to pay the Attorney fees of **\$10,300.00** as compensation for services rendered.

Court Investigator Dina Calvillo's Report was filed 1/6/2014.

NEEDS/PROBLEMS/COMMENTS, continued: These notes include notes that were originally prepared for the hearing held on 9/8/2014, with the declarations subsequently filed by the Petitioner *noted in gray highlighted italics*, for the Court's reference in considering the accounting as presented and supplemented. Rather than requesting an amended accounting be filed to incorporate the supplemented information, the accounting has been re-reviewed in conjunction with the subsequently filed supplemental declarations, and accordingly the accounting appears to be more complete and satisfactory in its explanations of the schedules submitted for the Court's consideration and approval. However, the proposed order that is requested to be submitted by Attorney Boyajian should include the repayments to the Conservatorship of **\$195.44** and **\$500.00** (as noted below.)

Notes Re Reimbursement to the Conservatorship Estate:

- Schedule C, Disbursements shows **\$195.44** was paid to Attorneys Tomassian, Pimentel & Shapazian on 10/16/2013 for legal consultation fees in violation of Probate Code § 2647, which provides no attorney fees may be paid from the estate of the Conservatee without prior Court order. The estate of the Conservatee is not obligated to pay attorney fees established by any engagement agreement or other contract until it has been approved by the Court. *Clarifying and Explanatory Declaration filed on 9/8/2014 states the Conservator had intentions at the time of the payment to search for and obtain a new attorney and was under the impression that her actions were furthering the objectives and goals of the estate and Conservatee; Conservator submits that she will reimburse the estate **\$195.44** for such disbursement.*
- Schedule C, Disbursements shows **\$500.00** was paid to Attorney Thomas Boyajian on 10/16/2013, and **\$840.00** was paid to Attorney Thomas Boyajian on 2/6/2014 (totaling **\$1,340.00**) for Conservatorship legal fees in violation of Probate Code § 2647, which provides no attorney fees may be paid from the estate of the Conservatee without prior Court order. *Clarifying and Explanatory Declaration filed on 9/8/2014 states that the **\$500.00** legal fees paid to Attorney Thomas Boyajian were in fact consultation fees for 2 hours of consultation offered to the Conservator prior to his being hired and becoming attorney of record; the Conservator made payments from the conservatorship assets instead of her own personal assets; therefore, the Conservator will reimburse the estate **\$500.00** for such legal consultation fees. The **\$840.00** reimbursement was erroneously phrased as conservatorship legal fees, though the disbursement was related to Court filing fees and publication fees in relation to the sale of Conservatee's home; thus disbursement does not violate Probate Code § 2647 (receipts attached as Attachment B).*

~Please see additional page~

Notes Re Questionable Expenditures: Schedule C, Disbursements shows **\$163,620.79** was spent during the one and one-half year account period (12/1/2012 to 6/30/2014) and contains the following expenditures noted for the last hearing as being questionable, such that the Conservator Court may require explanation and/or reimbursement to the Conservatorship estate:

- 4/23/2013 payment for "What is this (Conservatorship Payment)" [quote from original] in the amount of **\$833.00**. Clarifying and Explanatory Declaration filed on 9/8/2014 states this disbursement was made to pay the premium on a surety bond to suffice the requirement of bond for this conservatorship (copy of cashier's check at Attachment C.)
- 5/10/2013 payment to Golden Living for "Something" [quote from original] in the amount of **\$7,910.00**; payment on 8/14/2013 to Golden Living for "Something" [quote from original] in the amount of **\$15,820.00**. Clarifying and Explanatory Declaration filed on 9/8/2014 states the original phrased payments for "something" were intended by the drafter to go back and make the proper entry but failed prior to the filing to make the entry; both disbursements were in fact to pay the Conservatee's skilling nursing home living.
- 6/14/2013 payment of **\$21.96** and 12/23/2013 payment of **\$589.29** (totaling **\$611.25**) to Data Central Collection Bureau. Clarifying and Explanatory Declaration filed on 9/8/2014 states these payments to a collection agency for Conservatee's outstanding bills to American Ambulance and Community Medical Imaging (billing invoices and payment receipts attached as Attachment D).
- 3/24/2014 payment to Golden Living for "Conservatee's Residence Fee" in the amount of **\$44,130.00**. Clarifying and Explanatory Declaration filed on 9/8/2014 states the Conservatee was behind on her payments due to the pending sale of her home and the ability to pay the outstanding balance did not become viable until the home was sold.

Notes Re Exhibit A1-A6, Declaration of Thomas M. Boyajian, Request for Attorney Fees, which contains itemizations that include:

- Charge of **\$500.00** total solely for work on the publication in Business Journal for publishing the notice of sale of the Conservatee's real property. Clarifying and Explanatory Declaration filed on 9/8/2014 states the sale of Conservatee's home required Attorney Boyajian to spend many hours over a seven day span preparing the template going back and forth with the Business Journal trying to fix and correct errors made to the proposed template; instead of billing the estate the full amount of time spent, he only billed a nominal fee.
- Total hours of **41.20** at **\$250.00** per hour stated as the hours representing the charge of **\$10,300.00** for Attorney fees appears to be incorrect, as the calculation of hours itemized actually totals **37.55** hours representing a charge of **\$9,387.50**, resulting in an **overcharge** of **\$912.50** to the Conservatorship estate for the requested attorney fees. Clarifying and Explanatory Declaration filed on 9/8/2014 states this was a technical error and the correct hours of **37.55** are the correct total hours, and compensation is requested for a total of **\$9,387.50**. Attorney Boyajian filed on 9/30/2014 an Amendment to Clarifying and Explanatory Declaration Previously filed on 9/6/2014, which states upon review of his total hours, he would like to explain to the Court the likely cause of the technical error; initially when he drafted his attorney hours declaration his hours spent on this case exceeded 41.20 total hours; after some thought and considering the overall circumstances of the estate, he decided to take a "pay cut" and reduce the hours so it could be "fair" to the estate and better fit the circumstances of the estate; he would like to assure the Court that he has already brought down the total hours spent on this case and discounted his hours a total of 12.1 hours not billed for [itemized]; thus the original **\$10,300.00** request was fair and equitable and he requests that amount.

~Please see additional page~

Notes Re Depletion of Conservatorship Estate Assets:

- Paragraph 10 of the *Petition* states that "estate assets are being depleted rather rapidly due to the 24-hour, 7 day-a-week specialized skilled nursing attention the Conservatee requires to prosper. As such, the initial bond amount required by the Court was set on the rather high value of the estate at that time. Currently, the estate value is worth much less." Noted for or the Court's reference is *Schedule C, Disbursements* showing itemizations for skilled nursing home payments of ~\$87,697.31 during this account period of the \$163,620.79 total expenditures. **Clarifying and Explanatory Declaration filed on 9/8/2014** states that as presented in *Schedule C, Disbursements*, the total amount of expenditures spent on the needed specialized nursing facilities to house the Conservatee and provide needed attention equates to a whopping \$129,177.83 for this accounting period; herein lies where the majority of estate funds are being spent; there is not alternative to the extinguishment of estate assets because the Conservatee will continue to require such specialized nursing housing for which the price is extremely high; Conservator has attempted and applied on different occasions for government entitlements to step in and pick up the tab, but Conservatee's assets cause her not to qualify for such entitlements; as the Conservatorship estate assets are lessened, the Conservatee will in turn start to qualify for government entitlements which will then pick up the tab.
- More specifically informing the Court regarding depletion of assets is the **Petition to Reduce Amount of Bond filed 6/9/2014**, stating that "the bond in the amount of \$123,895.20 based on the value of the estate as of 6/1/2014 is excessive; the estate has been reduced significantly because: (1) The Conservatee has needed homecare at the cost of \$2,000.00 per month for a year; (2) For the past year and a half the Conservatee has lived in an assisted living facility center with the average monthly cost of \$7,500.00; (3) There have been expenses of \$10,000.00 to pay off the encumbrance on the 1993 Fleetwood RV, and various other estate related expenses." The following observations are provided to assist the Court in determining the reasonableness of having paid off the 1993 RV, which Paragraph 7 of the *Petition* and the *Schedule D, Losses on Sales/Donations* state was sold for \$1,000.00, resulting in a loss on sale of \$11,500.00, and for which the Conservator requests confirmation and approval of the sale as depreciating property:
 - It is unclear the basis upon which the Conservator chose to use \$10,000.00 of Conservatee's assets to pay off the encumbrance on the 1993 RV which Conservatee could not use and which was valued on the *Inventory and Appraisal* at \$12,500.00 as of 11/8/2012. The instant *Petition* states the 1993 RV was sold for \$1,000.00; it appears that this expenditure was not a frugal use of Conservatee's limited estate funds. Based upon the large disbursements and amounts requested for Conservator's and Attorney fees, it appears that the Conservator and/or her Attorney are spending down the Conservatee's assets, but provide no reasonable explanation to justify the significant expenditures from the Conservatorship estate.

Clarifying and Explanatory Declaration filed on 9/8/2014 states the 1993 Fleetwood RV was reappraised at the request of the Conservator because the prior appraisal filed with the Court on 3/7/2013 grossly overstated the value of the 1993 Fleetwood RV at \$12,500.00 and failed to account for all of the non-usable aspects and damage to the RV; [Reappraisal for Sale was filed on 9/8/2014] and was completed on 1/29/2014 by Probate Referee Rick P. Smith, with the new appraised value of the 1993 Fleetwood RV being \$1,000.00; the loss on sale mentioned in the accounting is superficial because the accounting used the original appraised value of the RV at \$12,500.00, when in fact the RV was not worth [that amount] and reappraised at \$1,000.00; the Conservator's rationale for selling the RV was because (1) The cost of repair to the RV was extremely high and not efficient for the estate; (2) The Conservatee is physically not able to use the RV anymore; and (3) The Conservator was starting to foresee storage fees being accrued against the estate for something not worth paying due to the reappraised value of the RV, thus the Conservator's acts were in line with promoting and preserving the estate; she was prudent and frugal in this aspect.

Attorney Boyajian filed on 9/30/2014 an Amendment to Clarifying and Explanatory Declaration Previously filed on 9/6/2014, which states that upon review of the issue regarding the unverified encumbrance relating to the Conservatee's RV, it was brought to his attention by the Conservator that the encumbrance was for an outstanding loan balance to Bank of America and said encumbrance was completely paid off by the Conservatee long before the inception of the Conservatorship; this the encumbrance did exist but it is moot in regards to the Conservatorship accounting; for purposes of the Conservatorship accounting and the new appraised value of the recreational vehicle set at \$1,000.00, the \$10,000.00 encumbrance should have absolutely no bearing on the accounting or on the question of whether the Conservator made the right decision in selling the RV.

Note Re Conservator's Commissions: Exhibit B1 entitled Declaration of Irene V. Santos, Request for Compensation contains the following itemizations set forth here as examples for the Court's consideration of the charges totaling **\$13,425.00** requested by the Conservator be paid from the estate for services including the sale of Conservatee's real property, visits to the care facility where her mother lives, marshalling assets, paying all bills promptly, managing the estate frugally, and "to compensate her for the time she missed work to attend court hearings amongst other things:"

- **12/1/2011 through 12/17/2012**, charge of **96** hours @ **\$30.00** per hour totaling **\$2,880.00**, for paying bills, driving to locations to pay bills, phone calls for medical appointments, shopping for Conservatee;
- **12/1/2011 through 6/15/2012** [dates **overlap** the dates noted above], charge of **120** hours @ **\$30.00** per hour totaling **\$3,600.00**, for hiring caregiver to assist Conservatee, checking in on Conservatee weekly to make sure groceries were bought and home was cleaned and to pay the caregiver;
- **1/1/2012 through 8/1/2012**, charge of **81** hours @ **\$30.00** per hour totaling **\$2,430.00**, for taking Conservatee to **18** doctor appointments both picking up and returning her home;
- **2/1/2013 through 6/1/2013**, charge of **9** hours @ **\$30.00** per hour totaling **\$270.00**, for meeting with Conservatee's health care facilities case workers, nurses and C&A regarding her medications, physical needs and any issues she had with the facility and her care.

Local Rule 7.16(A) provides that attorney fees and conservator commissions in conservatorship matters are awarded based upon what is just and reasonable. The Court's determination must be based upon the justness and reasonableness of the amount of the request in relation to the total value of the conservatorship estate. Here, the ending property on hand is stated on Schedule E, Assets on Hand as of June 30, 2014 as **\$47,101.81**, of which **\$42,601.81** is cash. Deduction of requested Conservator's commissions and Attorney fees would leave a balance remaining of **~\$18,876.81**, which will be inevitably less as of the current date.

Attorney Boyajian filed on 9/30/2014 an Amendment to Clarifying and Explanatory Declaration Previously filed on 9/6/2014, which states Petitioner is submitting a mileage log that Conservator kept track of between 1/3/2012 through 5/30/2014 showing in detail the Conservator's activities in relation to the Conservatorship; please refer to Attachment A showing Conservator expended 1,064 miles through this period, and highlights the many occasions Conservator was not at her normal job due to carrying out her responsibilities as Conservator.

Note: If Petition is granted, Court will set status hearings as follows:

- **Thursday November 20, 2014 at 9:00 a.m. in Dept. 303** for filing proof of reduced bond; and
- **Monday, August 10, 2015 at 9:00 a.m. in Dept. 303** for filing of the second account.

Pursuant Local Rule 7.5, if the documents noted above are filed 10 days prior to the dates listed, the hearings will be taken off calendar and no appearance will be required.

			The FRESNO COUNTY PUBLIC GUARDIAN was appointed as Conservator of the Person and Estate on 8-1-13.	NEEDS/PROBLEMS/COMMENTS:
			On 9-9-14, the court set this status hearing regarding visitation with the conservatee's son, ALVIN LEE WILLIAMS in response to the Court Investigator's Annual Review Report filed 9-3-14.	
	Aff.Sub.Wit.		Notice of Status Hearing was sent to all parties, including the Public Guardian, County Counsel, Conservatee Atha Williams, and her sons Alvin Williams and Deran Williams, on 10-29-14.	
	Verified			
	Inventory		Court Investigator Jennifer Young filed an Annual Review Report on 9-3-14.	
	PTC			
	Not.Cred.			
✓	Notice of Hrg			
✓	Aff.Mail			
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			
				Reviewed by: skc
				Reviewed on: 10-24-14
				Updates:
				Recommendation:
				File 7 – Williams

Status Hearing Re: Petition for Appointment of Guardian of the Person

		TEMP EXPIRES 10-29-14	NEEDS/PROBLEMS/COMMENTS:
		RUBEN MACEDO and ERLINDA MACEDO , maternal grandparents, are Petitioners.	<p>Note: This petition was filed on 11-7-13. At Court Trial on 3-20-14, the parties entered into a temporary agreement as set forth by Ms. Hopper and the temporary guardianship was extended to 9-22-14.</p> <p>Minute Order 9-22-14: Ms. Hopper informs the Court that the mother has passed and she needs to amend the petition. Matter continued to 10-29-14. Temporary guardianship extended to 10-29-14.</p> <p>Note: Nothing further has been filed.</p>
Cont. from 092214		Father: JOHNNY JARAMILLO	
Aff.Sub.Wit.		– Personally served 12/06/13	
Verified		– Objection Filed 01/10/14	
Inventory			
PTC		Mother: CYNTHIA MACEDO	
Not.Cred.		– Consent & Waiver of Notice filed 11/07/13	
Notice of Hrg		Paternal grandfather: DECEASED	
Aff.Mail		Paternal grandmother: DORA JARAMILLO	
Aff.Pub.		– Notice dispensed 12/12/13	
Sp.Ntc.		Minors: Lauren Jaramillo and Jenelle Jaramillo	
Pers.Serv.		– consent and waive notice	
Conf. Screen		Sibling: Johnny Jaramillo	
Letters		– Served by mail 11/22/2013	
Duties/Supp		Petitioner alleges that the mother is terminally ill and is currently in hospice care. It is not anticipated that she will live much longer. The mother has nominated Petitioners to be guardians. The children have not visited with their father for approximately 3 years. The mother has custody of the children. Petitioners allege that the father is abusive and has a history of domestic violence in his relationships. Further, Petitioners allege that the last time the girls visited their father, he woke Lauren up and spanked her with a belt in Jenelle's presence. Petitioners state that the girls are afraid of their father and have not visited with him since that incident. Petitioners state guardianship is necessary because they are fearful that the father will try to take custody of the children when he learns of the mother's illness or passing. The girls do not want to have contact with their father.	
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
			Reviewed by: skc
			Reviewed on: 10-24-14
			Updates:
			Recommendation:
			File 8 - Jaramillo

Objections to Petition for Appointment of Guardian filed by John Jaramillo, Father, on 01/10/2014 state that he objects to the petition for guardianship as he is a fit and proper parent and there is no reason that custody should be with the grandparents. Mr. Jaramillo states that the maternal grandparent's hostility towards the father has made having a relationship with the children difficult. He states that he has been intentionally denied the right to visit with the children and to have them in his care on a regular basis and it is not deserved or warranted. Mr. Jaramillo states that he loves his children and can provide a loving and stable home for them.

Mr. Jaramillo states that the allegations of him spanking Lauren are false and misleading. He states that he did so when she chose her punishment but was not abusive in any way.

Mr. Jaramillo states it is not in the best interest of the children to allow the petitioner to continue to alienate him from his children and deny him his parental rights. He states he understands that the children are resistant because they have been coached, prodded, and rewarded to support their mother and grandparent's wishes. It is for these reasons that Mr. Jaramillo asks the Court to deny the petition for appointment of guardianship, or in the alternative, order that he have ongoing regular visitation with the children pending a psychological evaluation, counseling for both the children and father, and a further hearing in this matter.

Court Investigator Jennifer Daniel filed a report on 01/06/2014.

DOD: 11-24-11		LEO KERMOYAN , Administrator with Will Annexed, with Limited IAEA and bond of \$23,000.00, is Petitioner. Petitioner states that on his appointment, in order to reduce the amount of bond required, he requested that only limited authority be issued to him. At this time, Petitioner would like to be empowered to administer the decedent's estate with full authority under the IAEA, and requests that bond be increased accordingly.	NEEDS/PROBLEMS/COMMENTS: <u>Note:</u> If granted, the Court will set a status hearing for the filing of the increased bond as follows: <ul style="list-style-type: none"> Wednesday, 12-10-14, at 9:00 am in Dept. 303 If the increased bond is on file, the status hearing may be taken off calendar.
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		
<input checked="" type="checkbox"/>	Aff.Mail	W	
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen	Petitioner states the estate consists of real property valued at \$450,000.00 with probably annual income of \$29,000.00. There is no personal property or other income. Therefore, Petitioner requests to increase the bond to \$479,000.00. Petitioner believes it is in the best interest of the estate and those interested in it that he be empowered to administer the estate with full authority under the IAEA, with bond of \$479,000.00.	Reviewed by: skc Reviewed on: 10-24-14 Updates: Recommendation: File 9 – Kermoyan
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		

(1) First and Final Account and Report of Executor and (2) Petition for Settlement, Allowance of Commissions and Fees, and (3) Final Distribution

DOD: 2-26-14			FLOYD GREEN , Executor with Full IAEA without bond, is Petitioner. Account period: 2-26-14 through 9-15-14 Accounting: \$86,141.74 Beginning POH: \$84,609.21 Ending POH: \$69,480.44 (cash) Executor (Statutory): \$3,440.00 Attorney (Statutory): \$3,440.00 Distribution pursuant to Decedent's will and agreement among heirs re vehicles: Floyd Green, as Administrator of the Estate of Nancy Wood: \$33,200.00 Floyd Green: \$11,066.74 Diana Green: \$8,766.74 cash plus the 2001 Chrysler PT Cruiser Carrie Huggins: \$9,566.74 plus the 1994 Suzuki dirt bike	NEEDS/PROBLEMS/COMMENTS:
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input checked="" type="checkbox"/>	Inventory			
<input checked="" type="checkbox"/>	PTC			
<input checked="" type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
<input checked="" type="checkbox"/>	Aff.Mail	W		
<input type="checkbox"/>	Aff.Pub.			
<input type="checkbox"/>	Sp.Ntc.			
<input type="checkbox"/>	Pers.Serv.			
<input type="checkbox"/>	Conf. Screen			
<input checked="" type="checkbox"/>	Letters	3-4-14		
<input type="checkbox"/>	Duties/Supp			
<input type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input type="checkbox"/>	CI Report			
<input checked="" type="checkbox"/>	9202			
<input checked="" type="checkbox"/>	Order			
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input checked="" type="checkbox"/>	FTB Notice			

Reviewed by: skc
Reviewed on: 10-24-14
Updates:
Recommendation: SUBMITTED
File 10 – Bunney

11

Atty Hogue, David M.; Karby, Michael G.; of H & K Inc. Attorneys at Law, Dinuba (for Petitioner Theda Preheim, Beneficiary)

Atty Gunner, Kevin D., Law Offices of Gunner & Haught (for Mary K. Johnson, Successor Trustee)

Atty Shahbazian, Steven L., sole practitioner (for Mary K. Johnson, Successor Trustee)

Petition for Instructions for Appraisal of Personal Property by Probate Referee or Personal Property Appraiser; to Determine Reasonableness of Trustee's Fees; to Determine Equitable Set-Offs; to Remove and Surcharge Trustee for Breach of Fiduciary Duty and for Failure to Treat Beneficiaries Impartially; and to Determine Entitlement

Virgil DOD: 10/29/2000			THEDA PREHEIM , daughter and Trust Beneficiary, is Petitioner. Petitioner states: <ul style="list-style-type: none"> MARY K. JOHNSON, daughter and Successor Trustee of the VIRGIL PREHEIM AND EMMA H. PREHEIM REVOCABLE LIVING TRUST AGREEMENT dated 10/22/1999 (copy of trust attached as Exhibit A), served her Second and Final Account and Report (account period 12/21/2013 through 4/23/2014) on 5/22/2014 (copy attached as Exhibit C); Successor Trustee claims a Trustee's fee of \$17,500.00 from the Trust Estate on Hand of \$293,516.90; Petitioner submits the \$17,500.00 is an excessive fee to impose upon the Trust estate and beneficiaries; this sum amounts to slightly less than 6% of the Trust estate (\$17,611.14); Petitioner submits that custom and practice supports a Trustee's fee between 2% of the Trust estate [amounting to \$5,870.32] and 3% [amounting to \$8,805.07] of the Trust estate; Petitioner submits that a Successor Trustee's Fee of slightly less than 6% is excessive and seeks an instruction from the Court that the Successor Trustee account for her activities and efforts that benefitted the Trust estate in such an abnormal and beneficial way to justify such an extraordinarily large Trustee's fee; and seeks instruction from the Court that the Successor Trustee produce her logs, diaries, timesheets, journal entries, mileage logs, and other writings and records that will substantiate the number of hours spent administering the Trust estate; Petitioner seeks instruction from the Court as to what is "reasonable compensation" for the Successor Trustee; Petitioner submits that the Successor Trustee's fee is skeptically random and subjective in amount, and questions whether the claimed fee was drawn arbitrarily out of the ether because of the animosity existing between the Trust beneficiaries; <p align="center">~Please see additional page~</p>	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 9/3/2014.</u> Minute Order states Counsel will meet with mediator. Checks for partial distribution in the possession of beneficiaries may be negotiated without prejudice or waiver of any rights by any party. Counsel needs to file status report prior to hearing per local rule. Note: Please refer to Third and Fourth Additional Pages for recently filed Status Reports.
Emma DOD: 8/5/2012				
Cont. from 090314				
	Aff.Sub.Wit.			
✓	Verified			
	Inventory			
	PTC			
	Not.Cred.			
✓	Notice of Hrg			
✓	Aff.Mail	W/		
	Aff.Pub.			
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
	Order	X		
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			
			Reviewed by: LEG	
			Reviewed on: 10/27/14	
			Updates:	
			Recommendation:	
			File 12 - Preheim	

Petitioner states, continued:

- **Petitioner seeks instruction from the Court** that the Successor Trustee account for assertion that any and all property listed on *Exhibit A* to the Second Account, "*Items removed from Trustor's Home by THEDA PREHEIM*" were the property of the Trust estate and that the inventoried items of personal property were removed by Petitioner;
- During the life of Trustor Emma Preheim, a fire occurred on the Trust estate real property in 1996 (now properly sold as part of the trust administration) and a goodly portion of the personal property inventoried, "valued" and surcharged against the Petitioner by the Successor Trustee was actually destroyed years before the death of the surviving Trustor; a storage shed, the "Garden House" and ½ of a workshop, the garage and the barn;
- Successor Trustee did not visit the Trust estate real property between the death of Virgil Preheim in 2000 until 2012, when Emma Preheim died, creating a very strong inference that the Successor Trustee had little or no knowledge of the personal property constituting the Trust estate personal property assets; Successor Trustee made no allowance for the fact that Emma gifted away personal property items during her life, and for the fact that some of the personal property items taken by Petitioner when she moved from the property were her separate property, either gifted by Emma or earned and purchases as a result of her own effort, skill and industry;
- **Petitioner seeks instruction from the Court** that the Successor Trustee establish the basis for her belief that the property inventoried on Exhibit A was even taken by Petitioner; and **instruction from the Court** that the Successor Trustee establish the basis for her valuation of the personal property listed on Exhibit A and surcharged against the Petitioner's distributive share of the Trust estate in the amount of **\$50,953.05**;
- **Petitioner seeks instruction from the Court** that the Successor Trustee establish the basis for her surcharge of the distributive share of **AMBER PREHEIM** in the amount of **\$2,285.00**;
- Successor Trustee's valuation of personal property items appears arbitrary and capricious, constituting a breach of trust and of fiduciary duty on the part of the Successor Trustee; *[examples provided of valuations obtained from E-bay of books, which Petitioner has no knowledge existed in the possession of Emma/Trustor]*;
- Successor Trustee's conduct constitutes a breach of trust and fiduciary duty, and an open blatant act of discriminating among beneficiaries and preferring one beneficiary over another;
- Successor Trustee's actions are grounds for removal or surcharging of the Successor Trustee's distributive share of the Trust estate in an equitable amount to be determined by the Court;
- To the extent that Successor Trustee makes a showing by admissible evidence that any particular articles of personal property belonged to the Trust estate and were taken by Petitioner, the **Petitioner seeks an instruction from the Court** that those articles be appraised by a California Probate Referee to establish some sort of credible value for the particular article in question;
- To the extent that the Successor Trustee cannot show by utilizing admissible evidence that any particular articles of personal property belonged to the Trust estate were actually taken by Petitioner, the **Petitioner seeks an instruction from the Court** that those articles be deemed lost or non-existent, or destroyed in the fire of 1996, **but certainly not** *[emphasis in original]* surcharged against Petitioner's distributive shares of the Trust estate simply because the Successor Trustee possesses the caprice to do so;
- *[Paragraph 22, Pages 8 to 17, itemizes the personal property and valuations listed on Exhibit A to the Successor Trustee's Account, with Petitioner's allegations as to the existence or non-existence of each item and Petitioner's knowledge or non-knowledge of their dispositions to assist the Court in fact-finding for resolution of dispute]*;
- Petitioner states the total surcharge against Petitioner [by Successor Trustee] for mostly imaginary property is **\$35,306.00**.

~Please see additional page~

Petitioner prays for an order from the Court:

1. Adjudicating, finding and instructing that all personal property of the Trust estate be appraised by the Successor Trustee by employing the property appraisal services of a California Probate Referee, or in the alternative, by employing a personal property appraiser chosen by the Court from the private section, like **LALLY & ASSOCIATES**, for example;
2. Adjudicating, finding and instructing to address the reasonableness of the Trustees Fee of **\$17,500.00**, including any instructions the Court might deem appropriate that the Successor Trustee produce file diaries, log books, receipts and any other writings showing her activities benefitted the Trust estate, and an instruction setting the Trustee's Fee at a level of "reasonable compensation" as mandated by the terms of the Trust;
3. Adjudicating, finding and instructing that the Petitioner be afforded and allowed all equitable Set-Offs that might be due and owing to her, as fairness and equity might demand, and that all gifts made by the Trustor/**EMMA H. PREHEIM** during the Trustor's life to the Petitioner, or any other beneficiaries, be excluded from the Trust estate inventory, and not surcharged against any beneficiary's distributive share of the Trust estate, and/or any other appropriate relief as the Court might deem proper and necessary;
4. Adjudicating, finding and instructing that the Court removes the Successor Trustee, **MARY K. JOHNSON**, for breach of trust and breach of fiduciary duty in her actions and conduct for preparing an accounting that seeks to surcharge Petitioner in an amount over **\$50,000.00** by appraising property Petitioner doesn't even possess at ridiculously high values;
5. Adjudicating, finding and instructing the removal of the Successor Trustee, **MARY K. JOHNSON**, for her failure to treat all beneficiaries of this Trust equally as mandated by the Code;
6. Adjudicating, finding and instructing that the Successor Trustee, **MARY K. JOHNSON**, prepare an Amended Account and Report based upon actual appraisals of personal property, wherever that property might be located;
7. Adjudicating, finding and instructing that if the Successor Trustee, **MARY K. JOHNSON**, cannot locate and appraise items of personal property, those items of personal property cannot be inventoried as part of the Trust estate nor surcharged against any beneficiary's distributive share of the Trust corpus at the time of final distribution; and
8. Adjudicating, finding and instructing that the Successor Trustee, **MARY K. JOHNSON**, reimburse the Trust estate for the costs of bringing this Petition for Instructions, and/or that her Trustee's Fees be surcharged, or that her distributive share as a beneficiary be surcharged in an amount to be determined by the Court for her multiple breaches of trust, her multiple breaches of fiduciary duty, and her multiple acts of malfeasance, in an amount to be determined by the Court.

~Please see additional page~

Petitioner [THEDA PREHEIM's] Status Conference Statement filed by Co-Counsel Michael G. Karby on 10/16/2014 states:

- At the hearing [on 9/3/2014] on Petitioner Theda Preheim's *Petition for Instructions*, it was agreed by all parties before the Honorable Court [Judge Oliver] engaging in mediation might prove beneficial, before the parties mutually initiate their respective discovery plans, both of which will naturally entail large amounts of time and expense;
- Concordantly, the Court made an Order that the parties exercise their best efforts to engage in mediation and set this Status Conference date [on 10/29/2014];
- Mediation of the matter [was conducted] by Leon E. Tirapell, Esq., on 10/23/2014 at 9:30 a.m. at Mr. Tirapelle's law offices;
- As such, the "status" of this trust administration action rests in precisely the same position when it was taken up last time by the Court [on 9/3/2014] at the first hearing of Theda Preheim's *Petition for Instructions*;
- **Scheduling:** Petitioner invites the Court's attention to the fact that this action has been placed "on hold," in essence, by the parties' agreement to engage in medication at an initial step toward resolution of this legal dispute;
- Accordingly, no discovery has been conducted;
- In the event that this action does not settle at mediation, the **Court should calendar the Trial of this matter well into the summer of the calendar year 2015** *[emphasis added]* to enable each party to (1) propound discovery; (2) compel responses to discover, if needed; (3) compel further responses to discovery, if necessary; and then (4) move to seek an appropriate termination sanction or factual fining (as allowed by the Code);
- In point of fact, these multiple steps mandate by the Discovery Act, as amended, might not be possible to complete even in 6 months, considering codified time periods to propound and answer discovery, and the entirely legal but (nevertheless) agonizing slow and expensive remedies to compel further response and production of documents, of which the Court and all attorneys in this case are keenly aware;
- Further, "status" of the case may be provided by the parties at the actual Status Conference, which in this action will follow hard upon the parties' efforts at mediation less than a week before the Status Conference Hearing;
- The available dates for mediation and the Status Conference date itself simply fell in a coincidentally odd manner that prevented the parties from addressing "status of this case" more fully at this precise juncture.

Note: Proof of Service by Mail of Notice of Hearing filed 10/16/2014 shows notice and a copy of Petitioner's [Theda Preheim's] Status Conference Statement filed 10/16/2014 was mailed to all interested parties on 10/16/2014.

~Please see additional page~

Dept. 303, 9:00 a.m., Wednesday, October 29, 2014

Status Report of Respondent MARY K. JOHNSON filed by Co-Counsel Steven L. Shahbazian on 10/21/2014 states:

- The Petitioner is Theda Preheim, a residual co-beneficiary of the Preheim Trust; the Respondent is Mary K. Johnson, the successor trustee and an equal 1/3 residual co-beneficiary of the Trust with her sister, Theda, and brother, Lyle Preheim;
- Status of the Pleadings: The *Petition for Instructions* was filed by Theda on 7/16/2014;
- The Response to the Petition was filed by Mary on 8/28/2014, objecting to the allegations and requests for relief;
- In addition, Declarations in support of the trustee were filed by Mary on 8/28/2014, and by Lyle on 8/29/2014;
- Mediation: At the hearing on the Petition on 9/3/2014, the parties stipulated to engage in early mediation and jointly selected Leon Tirapelle as Mediator; the Court approved the parties' agreement to mediate;
- Mr. Tirapelle thereafter agreed to serve and a mediation date of 10/23/2014 [was] scheduled for the parties;
- Current Status: There has been no change in the status of this case, as mediation has not been conducted and the parties have agreed to defer discovery, or further pre-trial petitions/motions until mediation is completed;
- The total disputed amounts (limited, generally, to charges/credits regarding personal property assets and trustee's fees) total ~\$52,000.00 and there is a desire to limit the costs and attorney's fees that may be incurred without an early settlement;
- The parties will advise the Court of the outcome of the mediation;
- If it is not successful, the Court should set Settlement Conference and Trial dates.

Note: Proof of Service attached to the Status Report of Respondent Mary K. JOHNSON filed 10/21/104 shows a copy of the Status Report of Respondent MARY K. JOHNSON was mailed to Attorneys Hogue and Karby and to Lyle Preheim on 10/20/2014.

Note: Fifth Additional Page through Seventh Additional Page contain notes from the initial pleadings filed in this proceeding.

~Please see additional page~

Declaration of Mary K. Johnson filed 8/28/2014 states:

- She has performed services in her capacity as Trustee as summarized on *Exhibit A* to her *Declaration*, and believes them to be fair and reasonable under the circumstances and conditions of this estate, since shortly after the time of the death of the Decedent, **EMMA H. PREHEIM**, on 8/5/2012, until the present time;
- Among other duties, she expended a substantial amount of time in evicting THEDA PREHEIM from the residential property belonging to the estate, along with the extensive clean-up of the property caused by Theda and her family members also residing in the property, in order that it could be listed for sale and ultimately sold;
- She also expended substantial time in preparing for sale and selling the Trust property located out of state (*summary of activities and approximate time expended attached as Exhibit A*);
- [Note: *Exhibit A* itemizes a total of **696.6** hours for activities which includes such things as funeral arrangements (7.0 hours), attorney consultations with Attorney Gunner (30.0 hours), eviction process with Attorney Dan Rowley (9.0 hours), sale of Kansas property (38.0 hours excluding travel and lodging) an estimated hourly rate based upon **\$17,500.00** fee is **~\$25.12** per hour;]
- Page 2 of *Exhibit A* explains that she has missed numerous days off of work, and it is estimated that over the course of 2 years since Decedent died she has missed ~21 days of work in order to perform services, mostly in the clean-up and restoration of extremely trashed Reedley residential real property to put it in condition that would make it available for sale and pass inspection;
- With regard to items of personal property relating to the estate, attached as *Exhibit B* is a summary explanation regarding her personal knowledge as to the identity and existence of the various items of personal property, along with an explanation of the methods she employed in arriving at valuations for such items;
- [Note: *Exhibit B* contains narrative describing personal property history and valuation methods used including online reviews of similar or identical items, Blue Book pricing, using lowest valuations from online research; lists items in possession of Decedent that were removed, sold, lost or hidden by Petitioner and for which Petitioner was surcharged];
- A great many items of the Decedent were in the possession of Decedent at the time of her death, or shortly before, and it is my informed belief that they were either removed, sold, lost or hidden by Theda or persons under her control as described more fully in the attached exhibits.

Declaration of LYLE PREHEIM filed 8/29/2014 states:

- It is his estimation that he spent between 200 and 300 man hours of time assisting his sister, Mary K. Johnson, in cleaning up the Reedley property, making repairs, throwing out 13 dumpsters full of junk and waste over the course of a period of time his sister, Theda Preheim, and her family had been evicted from the property; the property was a total mess and disastrous to clean up;
- He also knows from personal knowledge that many of the items of personal property belonging to his mother and father that were previously on the property were nowhere to be found, and it is his belief that his sister Theda and her family removed many of those items from the property; many items were in possession of his mother at the time of her death and he believes they were either removed, sold, lost or hidden by Theda or persons under her control;
- Trustee Mary Johnson has performed extensive services in her capacity as Trustee, and he believes them to be fair and reasonable under the circumstances and conditions of this estate, since shortly after the time of the death of the Decedent on 8/5/2012 until the present time;
- Among other duties, she expended a substantial amount of time in evicting Theda from the residential property belonging to the estate, along with extensive clean-up of the property caused by Theda and her family members also residing in the property, in order that it could be listed for sale and ultimately sold;
- She also expended substantial time in preparing for sale and selling out-of-state Trust property.

~Please see additional page~

Response of Trustee Mary K. Johnson to Petition for Instructions for Appraisal of Personal Property by Probate Referee or Personal Property Appraiser; to Determine Reasonableness of Trustee's Fees; to Determine Equitable Set-Offs; to Remove and Surcharge Trustee for Breach of Fiduciary Duty and for Failure to Treat Beneficiaries Impartially; and to Determine Entitlement filed on 8/28/2014 states:

- This action involves the administration and interpretation of the Trust executed by **VIRGIL PREHEIM** and **EMMA H. PREHEIM**, which as is common in husband and wife revocable trusts, provided for lifetime income to both Trustors, and at the death of the survivor (in this case, Emma) the entire trust estate was distributed to certain family members;
- In this trust, there was a provision that each "living grandchild and great grandchild" of the Trustors would receive **1%** of the Trust estate;
- Upon the death of Emma, **19** persons qualified for this distribution, resulting in **19%** of the residual estate being payable to grandchildren and great grandchildren;
- After such distributions, the remaining residual estate was to be divided in equal shares to the 3 children of the Trustors, being **THEDA PREHEIM, MARY K. JOHNSON**, and their brother, **LYLE DEAN PREHEIM**;
- The Trustors recognized that there were (potential) loans to their children and provided that those loans would reduce his/her final distribution of the residual estate to the beneficiary;
- The Successor Trustee after the death of the initial Trustee is Mary, and the alternate if Mary could not serve, is not [emphasis in original] either of the children of the Trustors, but **SUZANNE RICHARDSON**, who is the daughter of [Trustors' son] Lyle Preheim;
- The Trustee prepared and served upon all interested parties two accounts, the First Account (8/5/2012 – 12/21/2013) and the Second Account (12/21/2013 – 4/23/2014);
- Among the schedules that the Trustee has included in the Second Account, and which has created the most detailed argument in the Petition, is the "Explanation of Charge Backs," which are primarily against Petitioner and total **\$50,953.05**;
- Petitioner does not [emphasis in original] attack all of the charge backs except those related to the "personal property charge backs" totaling **\$35,306.00**; therefore, the remaining "charge backs" totaling **\$15,637.05** are not [emphasis in original] "disputed" which provides further instruction and evidence to the Court of the propriety of the accounting, the allocations, and the fees of the Trustee;
- Petitioner and her family members, for many years prior to and after the death of the Decedent, resided upon the Trustor's property (asset of the Trust) in Reedley; while this activity could have been tolerated while the Decedent was alive, and served as Trustee, such circumstance was not a reasonable use or allocation of trust resources after [emphasis in original];
- Based upon the declarations filed of Mary and Lyle, and any testimony which would be adduced at any contested hearing, there ensued a protracted battle between the Trustee and the Petitioner to remove the Petitioner and family members from the Trust property, to then repair and clean it, and to attempt to retrieve some value from the Trustor's personal property which had been on the premises;
- In this difficult process, the Trustee incurred substantial time, the Trust incurred substantial attorney's fees and costs, and the Trust estate was substantially diminished by the value of the personal property that had been "lost," taken or damaged by the Petitioner and her family members, all to the detriment of the Trust estate;
- As a result, the distributive share of the Petitioner as offending beneficiary was charged with the direct [emphasis in original] costs, expenses and losses incurred by the Trust as a result of her misconduct;

~Please see additional page~

Response of Trustee Mary K. Johnson filed on 8/28/2014, continued:

Argument Re Powers of Trustee: *[brief sum]* There is an unsubstantiated argument in the Petition that the actions by the Trustee, as part of her administrative duties, and the "charge backs" against the Petitioner for the personal property values are improper, and that the Trustee should be "surcharged" against her fees and/or distributive share of the Trust estate for "multiple acts of malfeasance..." There is no specific allegation as to what these "acts of malfeasance" are, other than generally charging the Petitioner for her own "wrongful conduct" during the Trustee's administration; the Petitioner's conduct was a primary cause of the actions that the Trustee was required to undertake for the orderly administration of the Trust and to comply with the distributive provisions of the Trust instrument that requires the division of the residual trust estate into equal shares to the 3 residual beneficiaries; Petitioner has made no comment nor specific objection to the entries in the Second Account under "Explanation of Charge Backs" of the item noted as "Eviction Costs" comprising attorney's fees to Daniel Rowley of **\$3,985.00**, which were incurred to evict the Petitioner and her family members from the Trust's real property in Reedley, and the Fair Rental Value of the property charged for Petitioner's occupancy after Decedent's death until she left of **\$7,699.24**;

Argument Re Trustee's Fees: *[brief sum]* The Trustees fees are not merely for the Second Account, but cover both the First and Second account periods, and represent the total fees from commencement of the Trustee's services to final distribution; Petitioner objects to the Trustees fees of **\$17,500.00**, with the claim that such fees are presumptively not reasonable compensation as stated in the Trust Agreement; the Petitioner has computed a sum between **2% and 3%** of trust estate as the "custom and practice in this jurisdiction;" there is no specific "formula" to determine what are reasonable fees [citation to California Rules of Court 7.776]; under the difficult circumstances in which the Trustee found herself, the sum of **\$17,500.00** for her duties in the administration of the Trust is more than reasonable and is quite modest; the request by the Petitioner to "remove" the Trustee is superfluous; the Trustee has rendered a final account and report, and subject to the claims of the Petitioner, will conclude the administration of the Trust upon the final distribution of its assets; the preference of the Trustors for the Trustee is to be shown great weight and is not to be disturbed without compelling cause.

Respondent prays for an Order that:

1. The Petition of Theda Preheim be denied, in full;
2. The Actions and activities of Mary K. Johnson, as Trustee of the Trust, be confirmed and approved pursuant to Probate Code § 17200(a)(5);
3. The Trustee's fees of **\$17,500.00** be found to be reasonable pursuant to Probate Code § 17200(b); and
4. The Petitioner's objections to the Trustee's Second Account be determined to be without reasonable cause and in bad faith and that there be an award of attorney's fees and costs in favor of the Trustee against the Petitioner under probate Code § 17211(a).

Proof of Service by Mail attached to the Response filed 8/28/2014 shows the response was served to Attorneys David Hogue and Michael Karby on 8/28/2014.

DOD: 4-28-89		SPECIAL ADMINISTRATION EXPIRES 10-29-14		NEEDS/PROBLEMS/COMMENTS:	
		FREMON GRAVES , Son-in-law, was appointed as Special Administrator on 8-27-14 with authorization to obtain a settlement check from the Black Farmers' Discrimination Litigation Claims Administrator and deposit same into a blocked account.		1. <u>Need Duties and Liabilities of Personal Representative and Confidential Supplement DE-147 and DE-147S.</u>	
		At the hearing on 8-27-14, the Court set this status hearing.		2. Need verified written status report pursuant to Local Rule 7.5. Were the settlement funds obtained and placed into a blocked account pursuant to the Minute Order of 8-27-14?	
Aff.Sub.Wit.		As of 10-24-14, nothing further has been filed. On 10-28-14, Attorney Boyajian filed an unverified status report. See Page 2.		3. Need Receipt for Blocked Account (MC-356). <u>Note:</u> It does not appear that an Order to Deposit Money Into Blocked Account (MC-355) was ever submitted to the Court for signature.	
Verified		Note to Judge: The Examiner Notes from the original hearing on 8-27-14 are attached for your reference. There were numerous issues noted; however, there was some urgency due to a deadline to obtain the check of 8-30-14.		4. The original petition for appointment as special administrator to obtain the settlement check indicated that he intended to remit a portion to the IRS. However, the Special Administrator does <u>not</u> have authority to disburse estate funds; only to obtain them and place them into a blocked account.	
Inventory		Regardless, there has been no follow-up regarding the issues that were brought to the Court's and the attorney's attention at the last hearing.		<u>Does the Special Administrator intend to file a petition to probate the decedent's estate? If not, what is the anticipated course of action for these funds?</u>	
PTC		These issues include:		5. The Court may require accounting pursuant to Probate Code §8546.	
Not.Cred.		<ul style="list-style-type: none"> Need Duties The special administrator is not authorized to distribute funds. Need date of death of deceased spouse. Proper notice of administration was not served. The Court was never given a complete list of heirs and there were numerous blanks on the petition pertaining to whether there may be other heirs than Mr. Graves' wife. Mr. Graves' wife is the decedent's daughter; however, she suffers from dementia. Does Mr. Graves have authority to act on her behalf going forward? If she is the heir, will conservatorship be necessary? 		Reviewed by: skC	
Notice of Hrg				Reviewed on: 10-24-14	
Aff.Mail				Updates: 10-28-14	
Aff.Pub.				Recommendation:	
Sp.Ntc.				File 13 – Logan	
Pers.Serv.					
Conf. Screen					
Letters					
Duties/Supp					
Objections					
Video Receipt					
CI Report					
9202					
Order					
Aff. Posting					
Status Rpt					
UCCJEA					
Citation					
FTB Notice					

Page 2

Status Report (unverified) filed by Attorney Boyajian states:

The settlement funds from the Black Farmers Discrimination Administrators had to be claimed by 8-30-14. The Court's order of 8-28-14 was submitted to the Black Farmers Discrimination Administrators and to the Bank of America, Fig Garden Financial Center to implement the Court's orders. They spent about 2 weeks to a month with Bank of America attempting to implement the orders. The local bank stated they could establish a blocked account for the funds, but then they determined after a call to their legal department that they couldn't.

The Black Farmers Discrimination Administrator sent a check for \$50,000.00 instead of \$62,500.00 (as stated in the Court order) because \$12,500.00 was paid directly to the IRS. The bank would not accept the check because it had a different amount than stated in the order.

Because the check had to be deposited before 9-25-14, it was incumbent that it be deposited or the check would void. Therefore, the check was deposited at the Special Administrator's branch where his personal funds are deposited in a separate account in the name of the Estate of Wesley Logan at the Union Bank at Shaw and Marks. At this time, Union Bank is awaiting a Court Order to block the account.

Mr. Boyajian requests to continue the special administration for a reasonable time to implement the Court's orders and distribute funds to Rachel Graves.

Petition for Probate of Will and for Letters Testamentary; Authorization to Administer Under IAEA (Prob. C. 8002, 10450)

DOD: 11/14/2013		KIMBERLY KYLE HALL , daughter, is Petitioner, and requests appointment as Executor without bond. Full IAEA – OK Will dated – NEED WILL Residence: Fresno Publication: The Business Journal <u>Estimated Value of the Estate:</u> Personal property - \$300,000.00 Probate Referee: RICK SMITH	NEEDS/PROBLEMS/COMMENTS: <u>CONTINUED FROM 10/01/14</u> 1. The Petition indicates that the decedent had a will, however, no copy of the will is attached to the petition and the original will does not appear to have been deposited with the Court. Need copy of will and original will deposited with the court. 2. The petition is not marked at item 5(a)(7) or (8) regarding issue of a predeceased child. 3. Need Confidential Supplement to Duties and Liabilities. 4. Need Order & Letters. <u>Note:</u> The petition is requesting appointment as Executor without bond. The Examiner is unable to verify these details without a copy of the will. The petition cannot go forward without a copy of the will and the original will must be deposited with the court.
Cont. from 100114			
<input type="checkbox"/>	Aff.Sub.Wit.		
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<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
		Reviewed by: JF	
		Reviewed on: 10/24/14	
		Updates:	
		Recommendation:	
		File 15 - Oppelt	

**Petition for Appointment of Probate Conservator of the Person and Estate (Prob. C.
1820, 1821, 2680-2682)**

Age: 60 DOB: 01/10/1954		<p>LILIAN BOWES, mother is petitioner and requests appointment as Conservator of the person, with medical consent and for appointment as conservator of estate without bond.</p> <p><u>Estimated value of the Estate:</u> Personal property - \$33,694.87 Annual income - \$68,093.75</p> <p>Capacity Declaration – Need</p> <p>Petitioner states: the proposed conservatee is a patient in the U.S. Veteran's Hospital in Fresno, California. He is being administered 75mg of Thorazine twice daily and 1mg of Klonopin three times daily. He is diagnosed with schizophrenia. His medical condition is a result of injuries suffered while serving in the armed forces of the United States of America. Because of the heavy doses of medication he is unable to tend to his daily needs, such as dressing, handling his financial affairs, to live outside the facility, to communicate with his family, to live a normal life. Due to the medical condition of the proposed conservatee and the heavy doses of medication administered to him on a daily basis, he is unable to handle his financial affairs, and is unable to resist fraud or undue influence.</p> <p>Nomination of Proposed Conservator by proposed Conservatee filed 09/29/2014.</p> <p>Court Investigator Julie Negrete's report filed 09/19/2014. <u>Please see additional page</u></p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Continued from 10/01/2014</p> <ol style="list-style-type: none"> 1. Need Capacity Declaration. 2. Need Video Receipt pursuant to Local Rule 7.15.8(A). 3. Petition requests that bond be waived. Probate Code §2320 states except as otherwise provided by statute, every person appointed as conservator shall, before letters are issued, give a bond approved by the court. Probate Code §2321 states Notwithstanding any other provision of the law, the court in a conservatorship proceeding may not waive the filing of a bond or reduce the amount of bond required without a good cause determination by the court that the conservatee will not suffer harm as a result of the waiver or reduction of the bond. If the court requires bond it should be set at \$74,903.13. 	
Cont. from 100114				
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<input type="checkbox"/>	9202			
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<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input checked="" type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			

Reviewed by: LV
Reviewed on: 10/24/2014
Updates:
Recommendation:
File 16 - Howard

On 09/05/2014, this investigator made contact with the proposed conservator, Lillian Bowes, and was informed that Mr. Howard had been moved to Canyon Manor in Novato, California. (Canyon Manor is licensed as a locked 24 hour Mental Health Rehabilitation Center and Psychiatric Rehabilitation Program.) On 09/09/2014, a reciprocal request was sent to Marin County Superior Court to make contact with the proposed conservatee.

On 09/18/2014, this investigator received a call from Scott Decada from Marin County Superior Court. Mr. Decada reported that their two court investigators were both out on a medical leave of absence. Therefore, he said that Marin County is not able to conduct the reciprocal request. He stated that one of their court investigators is expected back in two to three weeks, but was unsure the exact date.

Needs/Problems/Comments continued:

4. Need proof of service at least fifteen (15) days prior to the hearing of Notice of Hearing with a copy of the Petition for Appointment of Conservator for:
 - Veteran's Affairs

Note: If the petition is granted status hearings will be set as follows:

- **Wednesday, 11/26/2014 at 9:00a.m. in Dept. 303** for the filing of the Bond **and**
Wednesday, 02/25/2015 at 9:00a.m. in Dept. 303 for the filing of the inventory and appraisal **and**
- **Wednesday, 01/27/2016 at 9:00a.m. in Dept. 303** for the filing of the first account and final distribution.

Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter the status hearing will come off calendar and no appearance will be required.

		<p>ARLENE NIELSEN, Co-Settlor, Co-Trustee and beneficiary of the Sam E. Nielsen Trust "B", is Petitioner.</p> <p>Petitioner states the Sam E. Nielsen and Arlene Nielsen Family Trust was established 8-6-98 by and between Sam E. Nielsen and Petitioner as Settlers and Co-Trustees. The trust was amended 1-23-08 wherein Sam E. Nielsen resigned as co-trustee and the settlers' daughters, Patricia D. Nielsen and Carolyn Lee Kurtis, were appointed to act with Arlene Nielsen as Co-Trustees.</p> <p>Sam E. Nielsen died 11-24-08. After his death, the trust was split into two subtrusts, namely, the Arlene Nielsen Trust "A" (the survivor's trust), and the Sam E. Nielsen Trust "B" (the bypass trust). Trust "A" is revocable and amendable by the surviving settlor. Trust "B" is irrevocable. There have been no modifications of either of the subtrusts as of this date.</p> <p>Petitioner states the settlers' intent with regard to Trust "B" is expressly set forth in Paragraph 9E, wherein the settlers state that their primary concern is the welfare of the surviving spouse, and that the interest of others in the trust are secondary. Petitioner has recently moved to assisted care, which has significantly increased the cost of her care and it is her understanding that the cost will continue to substantially increase.</p> <p>Under Paragraph 9C of Trust "B," distributions from principal on behalf of Petitioner are limited by an ascertainable standard with the trustee directed to look first to funds in Trust "A." Such directions are inconsistent with the settlers' intention s set forth in 9E.</p> <p>Petitioner seeks to modify the terms of Paragraph 9C of Trust "B" to provide that the trustee may pay to or apply to the benefit of the Surviving Spouse such sums out of the principal of Trust "B" as necessary for the Surviving Spouse's comfort, in addition to her health, education, support and maintenance, and without application first to the funds in Trust "A."</p> <p>Petitioner provides the proposed modification language for Paragraph 9C at #5 of the Petition on Page 3. Consents of all beneficiaries including Petitioner, Carolyn Lee Kurtis, and Patricia D. Nielsen, are attached to the petition. Pursuant to §15403, if all beneficiaries consent, they may compel modification of an otherwise irrevocable trust.</p> <p>Petitioner prays for an order of this Court:</p> <ol style="list-style-type: none"> 1. Approving the modification as set forth in the petition; and 2. Such further relief as the Court deems proper. 	<p>NEEDS/PROBLEMS/COMMENTS:</p>	
	Aff.Sub.Wit.			
✓	Verified			
	Inventory			
	PTC			
	Not.Cred.			
✓	Notice of Hrg			
✓	Aff.Mail			W
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	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			

Reviewed by: skc
Reviewed on: 10-24-14
Updates:
Recommendation:
File 17 – Nielsen

Petition to Determine Succession to Real Property (Prob. C. 13151)

DOD: 5-10-10		ANTHONY CALDERON, MICHAEL CALDERON, DANIEL CALDERON, JR., YVONNE CALDERON, MELSSA CALDERON, and ANGELA CALDERON , adult children of the decedent, are Petitioners. 40 days since DOD No other proceedings I&A: \$145,000.00 (Decedent's 100% interest in certain real property in Kerman) Decedent died intestate Petitioners request Court determination that the decedent's real property passes to them in 1/6 undivided interests each.	NEEDS/PROBLEMS/COMMENTS: Update: Supplemental declaration of Attorney Jonathon L. Petty cured all defects.	
	Aff.Sub.Wit.			
✓	Verified			
✓	Inventory			
	PTC			
	Not.Cred.			
✓	Notice of Hrg			
✓	Aff.Mail			w
	Aff.Pub.			
	Sp.Ntc.			
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	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			
			Reviewed by: skc Reviewed on: 10-24-14 Updates: Recommendation: SUBMITTED File 18 – Calderon	

Status Hearing Re: Filing of the Inventory and Appraisal

DOD: 02/21/2014		<p>J. CHARLES HOWE, son was appointed Administrator with full IAEA without bond on 05/08/2014.</p> <p>Letters issued 05/12/2014</p> <p>Minute Order of 05/08/2014 set this Status Hearing for the filing of the Inventory and Appraisal.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>OFF CALENDAR. Inventory and Appraisal filed 10/28/2014.</u></p> <p>Minute Order of 10/08/2014 (Judge Cardoza): Counsel reports the inventory and appraisal is ready and just needs to be signed.</p>
Cont. from 100814			
Aff.Sub.Wit.			
Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
		Reviewed by: LV Reviewed on: 10/24/2014 Updates: 10/28/2014 Recommendation: File 19 - Beard	

		The FRESNO COUNTY PUBLIC GUARDIAN was appointed as Conservator of the Person and Estate on 5-29-14.	NEEDS/PROBLEMS/COMMENTS: 1. Need Inventory and Appraisal pursuant to Probate Code §2610 or verified written status report pursuant to Local Rule 7.5.
		At the hearing on 5-29-14, the Court set this status hearing for the filing of the Inventory and Appraisal.	
	Aff.Sub.Wit.		<div>Reviewed by: skc</div> <div>Reviewed on: 10-24-14</div> <div>Updates:</div> <div>Recommendation:</div> <div>File 20 – Alvarado</div>
	Verified		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg		
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	Aff.Pub.		
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	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

Petition for Appointment of Temporary Guardianship of the Person (Prob. C. 2250)

			GENERAL HEARING 12-17-14	NEEDS/PROBLEMS/COMMENTS:
			GLORIA DIAZ , Maternal Grandmother, and PAUL DIAZ , Maternal Uncle, are Petitioners.	<p>1. The proof of personal service of Notice of Hearing on the mother is incomplete. It does not contain the server's information and does not indicate whether a copy of the temp petition was served on the mother. The Court may require amended service pursuant to Probate Code §2250(e).</p> <p>2. If diligence is not found for the father, need service pursuant to Probate Code §2250(e) or further diligence.</p>
			Father: UNKNOWN - Diligence filed 10-16-14	
✓	Aff.Sub.Wit.		Mother: BRENDA L. DIAZ - Personally served 10-19-14	
✓	Verified		Paternal Grandparents: Unknown Maternal Grandfather: Charles Diaz, Jr.	
	Inventory		Petitioner states: Once again, the mother is still on drugs. She as another open case with CPS. After calling the police Case # 14-68542. Petitioners feel that Leonor is in danger because more than once the mother has said that she will kill herself.	
	PTC		Petitioner requests to be excused from giving notice to the father because she has no knowledge of him and heard that he was deported to Mexico for drug convictions.	
	Not.Cred.		The UCCJEA indicates that the minor has lived with Petitioners since 2010.	
✓	Notice of Hrg			
	Aff.Mail			
	Aff.Pub.			
	Sp.Ntc.			
✓	Pers.Serv.	w/o		
✓	Conf. Screen			
✓	Letters			
✓	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
✓	UCCJEA			
	Citation			
	FTB Notice			
				Reviewed by: skc
				Reviewed on: 10-24-14
				Updates:
				Recommendation:
				File 21 – Lachino

Pro Per Wood, Traci Jo (Pro Per Petitioner, paternal aunt)
 Pro Per Carver, Beth Ellen (Pro Per Petitioner, non-relative)

Probate Status Hearing Re: Termination of Guardianship in Tulare County

Age: 15 years		TRACI JO WOOD , paternal aunt, and BETH ELLEN CARVER , non-relative, are Petitioners. PAUL FORTIER and SHELLY FORTIER , paternal aunt and her husband, were appointed Successor Co-Guardians of the child through Tulare County Child Welfare Services in 2010. PAUL FORTIER and SHELLY FORTIER consent and waive notice. Father: DONALD WOOD ; consents and waives notice. Mother: LORI BECK ; consents and waives notice. Minor consents and waives notice. Paternal grandfather: Allen Wood; sent notice by mail 8/22/2014. Paternal grandmother: Gwen Wood; sent notice by mail 8/22/2014. Maternal grandfather: Unknown Maternal grandmother: Deceased Petitioners state that on 2/17/2006, Petitioner Traci Jo Wood was designated as the legal Guardian of Larry Wood, Sarah Wood and Rebecca Wood (triplets), Tulare County Child Welfare Services, and she remained Guardian until September 2010 when events in Ms. Wood's life forced her to resign as Guardian, though she would have preferred to remain as Guardian; ~Please see additional page~	NEEDS/PROBLEMS/COMMENTS: Notes: <ul style="list-style-type: none"> Minute Order dated 9/17/2014 set this Status Hearing regarding the termination of the Guardianship case existing in Tulare County, stating as follows: "Petition granted, effective when proof of termination of Guardianship in case J58194A, B, C is filed. If filed, no appearance needed at hearing [on 10/29/2014.]" Order Appointing Guardian and Letters of Guardianship have not been issued due to the fact that Petitioners have not provided the Court with the required proof of termination.
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Sp.Ntc.		1. Need proof of termination of Tulare County Guardianship Case J58194A, B, C. Proposed ward and his two siblings had been under guardianship with Petitioner TRACI JO WOOD through Tulare County Child Welfare Services from 2006 – 2010. Petitioner states that PAUL FORTIER and SHELLY FORTIER , paternal aunt and her husband, were appointed Successor Co-Guardians in 2010, after the resignation of Petitioner Traci Jo Wood. Pursuant to Probate Code § 2203(b), it appears this guardianship may not be granted until the Petitioners provide evidence to our Court that the guardianship established in Tulare County has been effectively terminated.	
Pers.Serv.			
✓ Conf. Screen			
Aff. Posting			
✓ Duties/Supp			
Objections			
Video Receipt			
✓ CI Report			
✓ Clearances			
✓ Order			
Letters		Reviewed by: LEG Reviewed on: 10/24/14 Updates: Recommendation: File 22 - Wood	
Status Rpt			
✓ UCCJEA			
Citation			
FTB Notice			

NEEDS/PROBLEMS/COMMENTS, continued:

Petitioners' statements from the initial *Petition* filed 7/15/2014 noted below for case background:

- The original guardianship was completed in Tulare County due to the fact that the children and their parents were residents of Tulare County;
- However, since Traci was originally awarded guardianship through to the guardianship being shifted to Paul and Shelly Fortier, Larry and his sisters have continually been residents of Fresno County (Kingsburg);
- Concurrent to Traci being named Guardian, the Dependency status of the three children [in Tulare County] was terminated; as such they have not been wards of the Court for some time;
- Larry stated a preference to return to Traci's care, and that of her partner, Co-Petitioner Ellen Carver, as his Guardians, and all family members relevant to Larry's care have deliberated on this issue together and they have determined that they should pursue a change in the guardianship;
- Larry has requested this change, and his parents and the current Guardians (the Fortiers) are in agreement;
- Petitioner Traci Wood received direction from Tulare County staff that since Larry is no longer a dependent of the Court, and he is a resident of Fresno County, the request for guardianship should be submitted to the Fresno County Superior Court due to the fact that jurisdiction over Larry is retained in Fresno where he resides;
- Through Larry's life, they have shared a strong bond of mutual respect, trust and love; they have an continue to provide consistency for him, and share a strong connection with him;
- The current Guardians are struggling with raising 3 teenage triples, and Petitioners' assuming guardianship of Larry would give Larry more individualized attention;
- Larry has thrived with the individual attention he has received this past year living with Petitioners.

Court Investigator Jennifer Young's Report was filed on 9/9/2014.

Atty Santiesteban, Lilia (Pro Per – Maternal Grandmother – Petitioner)

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

TEMP EXPIRES 10-29-14			NEEDS/PROBLEMS/COMMENTS:
LILIA SANTIESTEBAN , Maternal Grandmother, is Petitioner.			
Father (Lilia): CARLOS CHRISTOPHER CAPUCHIN			Continued from 10-1-14. <u>If this petition goes forward, the following issues remain:</u>
Father: (Micah and McKenzie): MICHAEL JASON WYATT - appeared at temp hearing 10-1-14			
Mother: LIZBETTE DE JESUS VALENZUELA - appeared at temp hearing 10-1-14			1. Need Notice of Hearing.
Paternal Grandfather (Lilia): Freddy Capuchin Paternal Grandmother (Lilia): Lizbette De Jesus Valenzuela			
Paternal Grandfather (Micah and McKenzie): Ernie Wyatt Paternal Grandmother (Micah and McKenzie): Sharon Wyatt			2. Need proof of personal service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing per Probate Code §1511 or consent and waiver of notice on: - Carlos Christopher Capuchin (Lilia's Father) - Michael Jason Wyatt (Micah and McKenzie's father)
Maternal Grandfather: Enrique Valenzuela			
Petitioner states the parents are not able to care for the children properly. The mother is abusing drugs. Lilia's father is incarcerated.			3. Need proof of service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing per Probate Code §1511 or consent and waiver of notice or declaration of due diligence on: - Freddy Capuchin - Lizbette De Jesus Valenzuela - Ernie Wyatt - Sharon Wyatt - Enrique Valenzuela
Court Investigator Jennifer Daniel filed a report on 10-20-14.			
Cont. from 100114			Reviewed by: skc Reviewed on: 10-24-14 Updates: Recommendation: File 23 - Wyatt
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Petition for Appointment of Guardian of the Person (Prob. C. 1510)

	TEMP EXPIRES 10-29-14		NEEDS/PROBLEMS/COMMENTS:
	MAURO and MARIA HERNANDEZ, paternal uncle and aunt, are Petitioners.		1. The mother has not been personally served with Notice of Hearing and a copy of the petition pursuant to Probate Code §1511. Although the Court Investigator's report states that the mother is in agreement, she is still entitled to personal service. The Court may require proper notice to the mother.
	Father: ARMANDO JIMENEZ – Consents and waives notice		
	Mother: KIMBERLY JIMENEZ		
	Paternal grandfather: EDUARDO RAMOS – Deceased		
	Paternal grandmother: MARIA RAMOS – Served by mail 9-4-14		
	Maternal grandfather: TERRY LACKY – Served by mail 9-4-14		
	Maternal grandmother: CATHY LACKY – Served by mail 9-4-14		
	Petitioners state the children were brought to their home 6 months ago. When they arrived they appeared neglected and behind developmentally. They are now doing well. The father was deported and is now residing in Tijuana, Mexico. The mother was using drugs and abusing alcohol.		
	Court Investigator Jennifer Young filed a report on 10-21-14.		
			Reviewed by: skc
			Reviewed on: 10-27-14
			Updates:
			Recommendation:
			File 25 – Jimenez

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Age: 13		<p align="center"><u>NO TEMPORARY REQUESTED</u></p> <p>JULIA ANN WEAVER, maternal great-grandmother, is Petitioner.</p> <p>Father: THOMAS LLEWELLYN – <i>Consent & Waiver of Notice filed 09/08/14</i></p> <p>Mother: KRYSTAL BURGIN – <i>Consent & Waiver of Notice filed 09/08/14</i></p> <p>Paternal grandfather: RICK LLEWELLYN Paternal grandmother: RHONDA WEBSTER</p> <p>Maternal grandfather: MICHAEL STANSBERY – <i>served by mail on 09/05/14</i> Maternal grandmother: KARLA STANSBERY – <i>served by mail on 09/05/14</i></p> <p>Petitioner states that she has been raising the minor since he was two years old. She has been able to meet his needs up to this point without guardianship, however, she has recently been told by a new health care provider that she will need documentation showing that she is the legal guardian in order to get him medical attention he may need in the future.</p> <p>Court Investigator Charlotte Bien filed a report on 10/10/14.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need proof of service by mail at least 15 days before the hearing of <i>Notice of Hearing</i> with a copy of the <i>Petition for Appointment of Guardian of the Person</i> <u>or</u> <i>Consent & Waiver of Notice</i> <u>or</u> <i>Declaration of Due Diligence</i> for:</p> <p>a. Rick Llewellyn (paternal grandfather)</p> <p>b. Rhonda Webster (paternal grandmother)</p>	
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		<p>Reviewed by: JF</p> <p>Reviewed on: 10/27/14</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 26 – Llewellyn</p>		